



House of Representatives

General Assembly

File No. 299

February Session, 2012

Substitute House Bill No. 5501

House of Representatives, April 5, 2012

The Committee on Judiciary reported through REP. FOX, G. of the 146th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING EYEWITNESS IDENTIFICATION PROCEDURES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 54-1p of the 2012 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective July 1, 2012*):

4 (a) For the purposes of this section:

5 (1) "Eyewitness" means a person who observes another person at or
6 near the scene of an offense;

7 (2) "Photo lineup" means a procedure in which an array of
8 photographs, including a photograph of the person suspected as the
9 perpetrator of an offense and additional photographs of other persons
10 not suspected of the offense, is [displayed] presented to an eyewitness
11 for the purpose of determining whether the eyewitness is able to
12 identify the suspect as the perpetrator;

13 (3) "Live lineup" means a procedure in which a group of persons,
14 including the person suspected as the perpetrator of an offense and
15 other persons not suspected of the offense, is [displayed] presented to
16 an eyewitness for the purpose of determining whether the eyewitness
17 is able to identify the suspect as the perpetrator;

18 (4) "Identification procedure" means either a photo lineup or a live
19 lineup; and

20 (5) "Filler" means either a person or a photograph of a person who is
21 not suspected of an offense and is included in an identification
22 procedure.

23 (b) Not later than February 1, 2013, the Police Officer Standards and
24 Training Council and the Division of State Police within the
25 Department of Emergency Services and Public Protection shall jointly
26 develop and promulgate uniform mandatory policies and appropriate
27 guidelines for the conducting of eyewitness identification procedures
28 that shall be based on best practices and be followed by all municipal
29 and state law enforcement agencies. Said council and division shall
30 also develop and promulgate a standardized form to be used by
31 municipal and state law enforcement agencies when conducting an
32 identification procedure and making a written record thereof.

33 [(b)] (c) Not later than [January 1, 2012] May 1, 2013, each municipal
34 police department and the Department of Emergency Services and
35 Public Protection shall adopt procedures for the conducting of photo
36 lineups and live lineups that comply with the following requirements:

37 [(1) When practicable, the person conducting the identification
38 procedure shall be a person who is not aware of which person in the
39 photo lineup or live lineup is suspected as the perpetrator of the
40 offense;]

41 (1) Whenever a specific person is suspected as the perpetrator of an
42 offense, the photographs included in a photo lineup or the persons
43 participating in a live lineup shall be presented sequentially so that the

44 eyewitness views one photograph or one person at a time in
45 accordance with the policies and guidelines developed and
46 promulgated by the Police Officer Standards and Training Council and
47 the Division of State Police within the Department of Emergency
48 Services and Public Protection pursuant to subsection (b) of this
49 section;

50 (2) The identification procedure shall be conducted in such a
51 manner that the person conducting the procedure does not know
52 which person in the photo lineup or live lineup is suspected as the
53 perpetrator of the offense, except that, if it is not practicable to conduct
54 a photo lineup in such a manner, the photo lineup shall be conducted
55 by the use of a folder shuffle method, computer program or other
56 comparable method so that the person conducting the procedure does
57 not know which photograph the eyewitness is viewing during the
58 procedure;

59 [(2)] (3) The eyewitness shall be instructed prior to the identification
60 procedure:

61 (A) That the eyewitness will be asked to view an array of
62 photographs or a group of persons, and that each photograph or
63 person will be presented one at a time;

64 (B) That it is as important to exclude innocent persons as it is to
65 identify the perpetrator;

66 (C) That the persons in a photo lineup or live lineup may not look
67 exactly as they did on the date of the offense because features like
68 facial or head hair can change;

69 [(A)] (D) That the perpetrator may or may not be among the persons
70 in the photo lineup or [the] live lineup;

71 [(B)] (E) That the eyewitness should not feel compelled to make an
72 identification; [and]

73 [(C)] (F) That the eyewitness should take as much time as needed in

74 making a decision; and

75 (G) That the police will continue to investigate the offense
76 regardless of whether the eyewitness makes an identification;

77 (4) In addition to the instructions required by subdivision (3) of this
78 subsection, the eyewitness shall be given such instructions as may be
79 developed and promulgated by the Police Officer Standards and
80 Training Council and the Division of State Police within the
81 Department of Emergency Services and Public Protection pursuant to
82 subsection (b) of this section;

83 ~~[(3)]~~ (5) The photo lineup or live lineup shall be composed so that
84 the fillers generally fit the description of the person suspected as the
85 perpetrator and, in the case of a photo lineup, so that the photograph
86 of the person suspected as the perpetrator resembles his or her
87 appearance at the time of the offense and does not unduly stand out;

88 ~~[(4)]~~ (6) If the eyewitness has previously viewed a photo lineup or
89 live lineup in connection with the identification of another person
90 suspected of involvement in the offense, the fillers in the lineup in
91 which the person suspected as the perpetrator participates or in which
92 the photograph of the person suspected as the perpetrator is included
93 shall be different from the fillers used in any prior lineups;

94 ~~[(5)]~~ (7) At least five fillers shall be included in the photo lineup and
95 at least four fillers shall be included in the live lineup, in addition to
96 the person suspected as the perpetrator;

97 ~~[(6)]~~ (8) In a photo lineup, no writings or information concerning
98 any previous arrest of the person suspected as the perpetrator shall be
99 visible to the eyewitness;

100 ~~[(7)]~~ (9) In a live lineup, any identification actions, such as speaking
101 or making gestures or other movements, shall be performed by all
102 lineup participants;

103 ~~[(8)]~~ (10) In a live lineup, all lineup participants shall be out of the

104 view of the eyewitness at the beginning of the identification procedure;

105 [(9)] (11) The person suspected as the perpetrator shall be the only
106 suspected perpetrator included in the identification procedure;

107 [(10)] (12) Nothing shall be said to the eyewitness regarding the
108 position in the photo lineup or the live lineup of the person suspected
109 as the perpetrator;

110 [(11)] (13) Nothing shall be said to the eyewitness that might
111 influence the eyewitness's selection of the person suspected as the
112 perpetrator;

113 [(12)] (14) If the eyewitness identifies a person as the perpetrator,
114 the eyewitness shall not be provided any information concerning such
115 person prior to obtaining the eyewitness's statement [that he or she is
116 certain] regarding how certain he or she is of the selection; and

117 [(13)] (15) A written record of the identification procedure shall be
118 made that includes the following information:

119 (A) All identification and nonidentification results obtained during
120 the identification procedure, signed by the eyewitness, including the
121 eyewitness's own words regarding how certain he or she is of the
122 selection;

123 (B) The names of all persons present at the identification procedure;

124 (C) The date and time of the identification procedure;

125 (D) In a photo lineup, the photographs [themselves] presented to
126 the eyewitness or copies thereof;

127 (E) In a photo lineup, identification information on all persons
128 whose photograph was included in the lineup and the sources of all
129 photographs used; and

130 (F) In a live lineup, identification information on all persons who
131 participated in the lineup.

132 Sec. 2. (NEW) (*Effective October 1, 2012*) Each police basic or review
133 training program conducted or administered by the Police Officer
134 Standards and Training Council, the Division of State Police within the
135 Department of Emergency Services and Public Protection or a
136 municipal police department shall provide training to police officers in
137 the administration of eyewitness identification procedures in
138 accordance with the policies and guidelines developed and
139 promulgated by the Police Officer Standards and Training Council and
140 the Division of State Police within the Department of Emergency
141 Services and Public Protection pursuant to subsection (b) of section 54-
142 1p of the general statutes, as amended by this act.

143 Sec. 3. Section 2 of public act 11-252 is repealed and the following is
144 substituted in lieu thereof (*Effective from passage*):

145 (a) There is established an Eyewitness Identification Task Force to
146 study issues concerning eyewitness identification in criminal
147 investigations and the use of sequential live and photo lineups. The
148 task force shall examine: (1) The science of sequential methods of
149 conducting a live lineup and a photo lineup, (2) the use of sequential
150 lineups in other states, (3) the practical implications of a state law
151 mandating sequential lineups, and (4) such other topics as the task
152 force deems appropriate relating to eyewitness identification and the
153 provision of sequential lineups.

154 (b) The task force shall consist of the following members or their
155 designees: The chairpersons and ranking members of the joint
156 standing committee of the General Assembly on the judiciary; the
157 Chief State's Attorney; the Chief Public Defender; the Victim Advocate;
158 an active or retired judge appointed by the Chief Justice of the
159 Supreme Court; a municipal police chief appointed by the president of
160 the Connecticut Police Chiefs Association; a representative of the
161 Police Officer Standards and Training Council; a representative of the
162 State Police Training School appointed by the Commissioner of [Public
163 Safety] Emergency Services and Public Protection; a representative of
164 the criminal defense bar appointed by the president of the Connecticut

165 Criminal Defense Lawyers Association; a representative from the
166 Connecticut Innocence Project; and six public members, including the
167 dean of a law school located in this state and a social scientist,
168 appointed one each by the president pro tempore of the Senate, the
169 speaker of the House of Representatives, the majority leader of the
170 Senate, the majority leader of the House of Representatives, the
171 minority leader of the Senate, and the minority leader of the House of
172 Representatives.

173 (c) The task force may solicit and accept gifts, donations, grants or
174 funds from any public or private source to assist the task force in
175 carrying out its duties.

176 (d) The task force shall report its findings and recommendations to
177 the joint standing committee of the General Assembly on the judiciary
178 in accordance with section 11-4a of the general statutes not later than
179 April 1, 2012.

180 (e) After submitting the report required under subsection (d) of this
181 section, the task force shall continue in existence for the purpose of (1)
182 assisting the Police Officer Standards and Training Council and the
183 Division of State Police within the Department of Emergency Services
184 and Public Protection in the development of policies and guidelines for
185 the conducting of eyewitness identification procedures by law
186 enforcement agencies as required by subsection (b) of section 54-1p of
187 the general statutes, as amended by this act, (2) researching and
188 evaluating best practices in the conducting of eyewitness identification
189 procedures as such practices may change from time to time, and
190 recommending such revised best practices to the Police Officer
191 Standards and Training Council and the Division of State Police within
192 the Department of Emergency Services and Public Protection, (3)
193 collecting statistics concerning the conducting of eyewitness
194 identification procedures by law enforcement agencies, and (4)
195 monitoring the implementation of section 54-1p of the general statutes,
196 as amended by this act. The task force shall report the results of such
197 monitoring, including any recommendations for proposed legislation,

198 to the joint standing committee of the General Assembly on the
199 judiciary in accordance with section 11-4a of the general statutes not
200 later than February 5, 2014.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2012</i>	54-1p
Sec. 2	<i>October 1, 2012</i>	New section
Sec. 3	<i>from passage</i>	PA 11-252, Sec. 2

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Sec. 2	<i>October 1, 2012</i>	New section
Sec. 3	<i>from passage</i>	PA 11-252, Sec. 2

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

There is no fiscal impact associated with creating standards for the eyewitness identification process.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**sHB 5501*****AN ACT CONCERNING EYEWITNESS IDENTIFICATION PROCEDURES.*****SUMMARY:**

This bill refines police techniques for conducting eyewitness identifications of both photographic and live lineups. It includes provisions on:

1. development, promulgation, and training functions performed jointly by the Police Officer Standards Council (POST) and the Division of State Police (DSP) in the Department of Emergency Services and Public Protection (DESPP);
2. the POST and DSP guidance and the statutory mandate that DESPP and each municipal police department develop its own lineup procedures that create a potential conflict;
3. police instructions and communications with eyewitnesses; and
4. new functions for the Eyewitness Identification Task Force.

The bill also makes minor changes.

EFFECTIVE DATE: Upon passage for the task force; July 1, 2012, for changes in the eyewitness procedures; and October 1, 2012, for the POST and DSP training.

POST AND DSP POLICIES

The bill requires, by October 1, 2012, that POST and DSP jointly develop and promulgate uniform, mandatory policies and appropriate guidelines for conducting eyewitness identification procedures. They must be based on best practices and followed by all municipal and

state law enforcement agencies. POST and DSP must also develop and promulgate a form for the agencies to use when conducting, and making a written record of, an identification procedure.

The bill also requires basic and review POST, DSP, and municipal police training programs to include a segment on administering the eyewitness administration identification procedures POST and DSP develop.

Potential Conflict with DESPP and Local Police Department Policies

In addition to the mandatory, uniform POST and DSP policies due by October 1, 2012, the law requires each municipal police department and DESPP to adopt procedures for conducting lineups. Current law required these procedures to be adopted by January 1, 2012, but the bill extends the deadline to January 1, 2013. It is unclear what will happen if an individual police department, not regulated or trained by POST, promulgates conflicting policies.

IDENTITY OF SUSPECT

Currently, municipal and DESPP photo and live lineup procedures require that, when possible, the person conducting the lineup not be aware of which person in the lineup is the suspect. The bill states that where this is not possible in a photo lineup, the person administering it use a “shuffle” method (similar to shuffling a deck of cards), computer program, or comparable method so that the person conducting the procedure does not know which photo the eyewitness is viewing.

Sequential Viewing

The bill also requires that whenever a suspect is among those participating in a photo or live lineup, each participant be presented sequentially so that the eyewitness views only one photograph or one person at a time. The POST and SPD must include this requirement in their policies and guidance.

INSTRUCTIONS TO EYEWITNESSES

The bill expands the instructions police officers must give to

eyewitnesses before the lineup.

Currently, eyewitnesses must be told that (1) the perpetrator may be among the persons in the photo or live lineup, (2) the eyewitness should not feel compelled to make an identification, and (3) he or she should take as much time as needed in making a decision.

The bill adds to the information eyewitnesses must be told before the lineup that:

1. he or she will be asked to view an array of photographs or a group of people, and that each photograph or person will be presented one at a time;
2. it is as important to exclude innocent persons as it is to identify the perpetrator;
3. the person in a lineup may not look exactly as he or she did on the date of the offense because features like facial and head hair can change;
4. the perpetrator may or may not (current law says only “may”) be among the people in the lineup; and
5. the police will continue to investigate the offense regardless of whether the eyewitness makes an identification.

The bill also instructs police personnel to give any other eyewitness instructions developed by POST and DPS.

Information About the Perpetrator

Current law prohibits police officers from telling an eyewitness who has identified the perpetrator any information about him or her before obtaining a statement indicating that he or she is certain about the identification. The bill permits information to be released after the eyewitness provides a statement indicating how certain he or she is of the selection.

Written Report

The law requires a written record for each identification procedure. Among other things, it must include the results, the date and time, those present, and information about people used in a photo lineup.

The bill requires the record to also include (1) the photographs (or copies) that were shown to the eyewitness and (2) the order in which they or the people used in a live lineup were presented.

EYEWITNESS IDENTIFICATION TASKFORCE

The bill assigns new functions to the 19-member Eyewitness Identification Task Force, created by PA 11-252. The task force originally studied issues relating to eyewitness identification and the effect of showing eyewitnesses photo arrays or live lineups one-by-one rather than all at once. The task force has to submit its findings and recommendations to the Judiciary Committee by April 1, 2012.

New Functions

The bill continues the task force and requires it to:

1. assist POST and DPS develop their eyewitness identification policies and guidelines;
2. research and evaluate best practices and make
3. recommendations to POST and DPS when such practices are revised;
4. collect statistics concerning the conduct of eyewitness procedures by law enforcement agencies; and
5. monitor the implementation of CGS § 54-1p (PA 11-252) that established eyewitness identification procedures).

The task force must report to the Judiciary Committee on the results of its monitoring, including any recommendations for proposed legislation, by February 5, 2014.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 42 Nay 1 (03/21/2012)